

The State of South Carolina



Office of the Attorney General

Opinion 1587-D
Pg 88T. TRAVIS MEDLOCK
ATTORNEY GENERALREMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3636

April 13, 1987

The Honorable Herbert U. Fielding
Member, South Carolina State Senate
122 Logan Street
Charleston, South Carolina 29401

Dear Senator Fielding:

You have requested the advice of this Office as to whether a school district may terminate teachers for the reason alone that the teachers hold "B" and "C" grade teaching certificates. According to information provided, these teachers will be terminated if they have not earned a "professional certificate", the formerly "A" grade certificate, by the beginning of the 1987-88 school year. This matter appears to be controlled by two State statutory provisions. Section 59-20-55 of the Code of Laws of South Carolina, 1976 provides as follows:

Beginning July 1, 1986, and thereafter, employment may be provided only to teachers who demonstrate minimum knowledge proficiency by meeting one of the criteria outlined in §59-20-50(4)(b). The criteria do not have to be met by teachers having twenty-five years or more of teaching service as of the effective date of the South Carolina Education Improvement Act of 1984 in order for them to be employed. (Emphasis added).

The above referenced criteria consist of holding a valid professional certificate, having a score of 425 or greater on the Common Examinations of the National Teachers Examination, meeting the minimum qualifying score on the appropriate area teaching examination or meeting the minimum standards on the basic skills examinations. §59-20-50(4)(b). According to information provided, anyone taking the Common examinations from 1957 until the discontinuance of that examination would have had to have had a 425 score to get a "B" certificate. Therefore, many "B" certificate

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holders would have satisfied the requirements of §59-20-50(4) (b) (2) and §59-20-55 for continued employment.

In 1986, these requirements were amended by the following Appropriations Act proviso (Act 540, Part I, §30) (proviso):

...continued employment is allowed for those teachers receiving an overall rating by the superintendent or his designee and the principal of at least satisfactory or its equivalent on a school district's official instrument for evaluating a teacher's performance in the classroom. In the event any teacher falling under the provisions of this statute achieves an overall rating of satisfactory or its equivalent but achieves less than satisfactory on any of the individual evaluation criteria required pursuant to South Carolina Code 59-26-30(J), the superintendent of the affected teacher shall require (1) the taking of the education entrance examination if the areas of deficiency identified on the district's official evaluation instrument relate to subject matter competence or command of written or spoken english; and (2) the successful completion of courses and/or seminars specifically relating to correcting deficiencies identified ...provided that the responsibility under this subparagraph to take course and/or seminars... shall be continuing until the affected teacher has no identified areas of performance which are less than satisfactory on the district's official evaluation instrument or has satisfied the standards of the Education Entrance Examination. 1/ This provision shall be available only to teachers possessing credentials from the South Carolina Department of Education authorizing them to teach in the public school of South Carolina as of the adoption of the [EIA, June 28, 1984] and have been certified to teach for the past ten years. (Emphasis added).

1/ Although the applicability of this proviso is limited to those teachers who are certified to teach as of the effective date of the EIA in 1984 and who had been certified for the past ten years, no "B" or "C" grade certificate holders should be excluded by these provisions because those certificates were no longer issued after 1971.

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Giving this proviso its plain meaning and reading it together with the provisions of §59-2-50(4) (b) and §59-20-55 requires a conclusion that those teachers who fail to satisfy the criteria of §59-20-50(4) (b) are allowed "continued employment" if the teachers receive at least a satisfactory or equivalent rating on their school district's official evaluation instrument or otherwise satisfy the criteria set forth in the proviso. South Carolina Department of Highways and Public Transportation v. Dickinson, 341 S.E.2d 134 (1986); Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970); Ops. Atty. Gen., (July 12, 1985); Sutherland Statutory Construction, Vol. 2A, §46.01 et seq. and 51.02.

The above proviso does not permit school districts to terminate teachers for the reason alone that they hold "B" or "C" grade certificates unless they both fail to meet the criteria in §59-20-50(4) (b) and fail to meet the standards of the above proviso. The underlined portions of the above statutes and proviso use language that normally conveys a mandatory meaning and, when the statutes are read together, their provisions are clearly mandatory. Dickinson, supra; Lewis, supra, and Sutherland, Vol. 2A, §57.03. Therefore, "B" and "C" grade certificate holders who meet the criteria of either §59-20-50(4) (b) or the proviso cannot be terminated for the reason alone that they hold "B" and "C" grade certificates. Of course, such teachers are not insulated from termination for appropriate reasons other than the grade of their teaching certificates. See Adams v. Clarendon County School District, 270 S.C. 266, 241 S.E.2d 897 (1978); §59-25-410 et seq. of the Code.

Even if the statutory provisions did not prohibit the termination of the teachers on the sole basis of the grade of their certificates, such action is likely to be prohibited constitutionally on the ground that it is arbitrary. The Honorable Clyde H. Hamilton, District Judge, made the following ruling that is pertinent here:

...the improvement of the educational quality of [a] district is simply not accomplished by terminating experienced teachers with satisfactory performance records on the basis of the results of a test where persons with lower scores are retained. Bryant v. Marion County School District No. 4 (C.A./82-1975-15, September 29, 1983).

In that case, the school district adopted a policy of discharging grade "C" certificate holders even though some grade "B" certificate holders had lower test scores on the Common Examinations of the

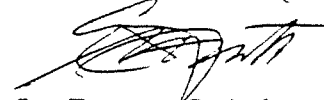
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National Teacher Examinations. The reason for these inconsistencies in the score and grades was that the minimum qualifying scores for the issuance of the graded certificates were changed. For example, in 1967, a Common examinations score of 475 earned a teacher only a "B" certificate, but in 1968, lower Common examinations score of 450 earned a teacher an "A" certificate provided that the teacher earned a combined score 975 on the Common and the Area Examinations. See Bryant at pp 3 and 4. Similar inconsistencies in the scores with respect to the grades of the certificates were found not to be a rational basis for dismissal by the Fourth Circuit Court of Appeals in United States v. Chesterfield County School District, South Carolina, 484 F.2d 70 (4th Cir. 1973). Accordingly, if any of the "B" and "C" certificate teachers that are to be terminated have higher scores on the Commons Examination than some professional or "A" certificate teachers who are being retained, the dismissals could be found to be invalid under the above authority.

In conclusion, termination of teachers for the reason alone that they hold "B" and "C" grade certificates appears to be prohibited by the South Carolina statutes set forth above. In addition, constitutional objections to the dismissals could be made if any of the "B" and "C" certificate holders have common examination scores that are higher than those of other teachers who are being retained.

If you have any questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.
Assistant Attorney General

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REVIEWED AND APPROVED:



Frank K. Sloan
Chief Deputy Attorney General


Robert D. Cook
Executive Assistant for Opinions